

**SETTLEMENT AGREEMENT BETWEEN MISSOURI DENTAL BOARD
AND ELLIOTT MUNALULA, D.D.S.**

Come now Elliott Munalula, D.D.S. ("Licensee") and the Missouri Dental Board ("Board") and enter into this settlement agreement for the purpose of resolving the question of whether Licensee's license as a dentist will be subject to discipline.

Pursuant to the terms of § 536.060, RSMo,¹ the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri ("AHC") regarding cause to discipline the Licensee's license, and, additionally, the right to a disciplinary hearing before the Board under § 621.110, RSMo.

Licensee acknowledges that he understands the various rights and privileges afforded him by law, including the right to a hearing of the charges against him; the right to appear and be represented by legal counsel; the right to have all charges against him proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against him; the right to present evidence on his own behalf at the hearing; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against him and, subsequently, the right to a disciplinary hearing before the Board at which time he may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against his license. Being aware of these rights provided him by operation of law, Licensee knowingly and voluntarily waives each and every one of these rights and freely enters into this settlement agreement and agrees to abide by the terms of this document, as they pertain to him.

Licensee acknowledges that he has received a copy of the investigative report and other documents relied upon by the Board in determining there was cause to discipline his license, along with citations to law and/or regulations the Board believes was violated.

For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this settlement agreement are true and stipulates with the Board that Licensee's license, numbered 013064 is subject to disciplinary action by the Board in accordance with the provisions of Chapters 621 and 332, RSMo.

¹ All statutory references are to Missouri Revised Statutes 2000, as amended, unless otherwise indicated.

Joint Stipulation of Fact and Conclusions of Law

1. The Missouri Dental Board ("Board") is an agency of the State of Missouri created and established pursuant to § 332.021, RSMo, for the purpose of executing and enforcing the provisions of Chapter 332.
2. Licensee Elliott Munalula, D.D.S. is licensed by the Board as a dentist, License No. 013064. Licensee's Missouri license was at all times relevant herein, and is now, current and active.
3. On or about April 16, 2014, the Board received a complaint regarding Licensee from M.L. M.L. was a patient of Licensee. Her complaint stated that when she went for a checkup she was "very displeased with his care." She stated that he was practicing out of a residential home with very outdated equipment. She stated that he did not clean her teeth well enough and used some sort of plaster on her. She stated she left in the middle of the appointment based on how bad the treatment was.
4. Based on M.L.'s complaint, the Board conducted an investigation.
5. On or about February 20, 2015, Board Investigator Tracey Pfaff met with Licensee at his office. Licensee stated he was not familiar with M.L.'s complaint but did remember M.L. He stated he had one dental assistant who was not an expanded functions dental assistant and did not have any special training. He stated she ran the front office, cleaned patient rooms, took x-rays and assisted him chairside. Licensee stated he only saw M.L. one time for a routine cleaning and exam. Licensee stated that M.L. was "difficult and questioned everything he did during the appointment." He stated they took x-rays and started cleaning when she "jumped out of the chair and left the office." He stated he never saw her again and that he refunded the money to her insurance company for the visit. He stated the reimbursement was for "work that was billed but not done." He stated it was a "clerical mistake." He stated the first check he sent "a year ago" was returned for insufficient funds and he "recently" sent another check.
6. On February 20, 2015, Investigator Pfaff also spoke with Licensee's assistant, Sandra. She stated she took care of the front office and assisted him with patients. She stated her job duties included cleaning patient rooms, handing Licensee instruments, taking care of patients before and after procedures, scheduling, billing and follow up calls. She stated she did not have any formal training in expanded functions and "did not do anything like that" for Licensee. She stated the only thing she remembered about M.L. was that she did not stay for her entire appointment and never came back or called back.

7. During her February 20, 2015 visit, Investigator Pfaff also conducted continuing education and infection control inspections. Regarding proof of the required continuing education, Licensee "could not find them" and as of Pfaff's April 24, 2015 Investigation Report, he had not provided any. Regarding the infection control inspection, Licensee was not in compliance with CDC guidelines because Licensee did not conduct weekly spore testing, had sterile gloves lying outside the original box and did not properly wrap instruments. Licensee stated he understood the violations and would send in weekly spore tests until further notice.

8. On March 3, 2015, Investigator Pfaff returned to Licensee's office to follow up on the infection control inspection issues. Licensee had fixed the issues with the gloves and instruments but was still not in compliance with spore testing. He stated he could not find the spore test results but would fax them to the office. He also was unable to provide any continuing education documentation. To date, Licensee has not provided evidence of proof of completion of 50 continuing education hours as required for renewal despite attesting on his November 2014 renewal form that he completed those hours.

9. On March 31, 2015, Licensee brought 9 of the ten patient files the Board requested to review to the Board office. Licensee stated that he "miscounted" and would send another record when he got back to the office the next week. As of April 2, 2015, Licensee had not provided the last patient record.

10. As part of the Board's investigation, on or about October 22, 2015, Licensee appeared before the Board during its regularly scheduled board meeting. Licensee testified as to the complaint and agreed to provide ten additional patient records to the Board for their review. Licensee provided the additional records on or about November 5, 2015.

11. Overall, a review of the patient records showed inadequate examination records, only 2 or three actual radiographs in all of the patient files and they were not of diagnostic quality, no treatment plan, no periodontal examination, no informed consent and very few, if any, health histories. A review of the all the individual patient records revealed:

- a. Patient C.B.'s record, dated January 13, 2014 contains only a statement: "exam, 3 p.a.'s, pain in tooth, disp. Tylenol #3." It contains no health history, diagnosis, treatment plan or treatment. The record does not even list which tooth or area of C.B.'s mouth was involved.
- b. Patient P.B.'s record contains only documents from his insurance company. There is no actual patient record.

- c. Patient A.C.'s record for April 12 contains only a statement "exam, prophyl, bws, med. Hist." For dates November 12, May 13 and August 15, the only thing written in A.C.'s record is "prophyl." There are no radiographs, medical history update, treatment plan or treatment record.
- d. For patient J.C.'s record on October 13, it states "2 p.a.'s 18 abscessed, clindamycin 150, referred." There is no additional information regarding the referral including to whom and for what patient J.C. was referred.
- e. For patient L.C., exam date November 30, 2013, the records state "exam, prophyl, FMX." However, the radiographs reveal multiple problems including caries, missing teeth and periodontal issues but there is no treatment plan listed regarding these issues. There is also no follow up to the patient regarding these issues only insurance documents.
- f. Patient M.C.'s chart showed that he was billed for an examination, prophyl, bitewing x-rays and fluoride but there no other records for patient history, treatment plan, radiographs or actual treatment.
- g. Patient W.C.'s chart for December 16, 2011 stated "exam, radiographs, refer" and for December 28, 2011 "exam, P.A., refer" but contained no other records for diagnosis, treatment plan, treatment or patient health history.
- h. Patient J.H.'s record for May 28, 2010 stated "exam, PA" and on July 7, 2010 "made RPD (removable partial denture)." However, there are no other records including diagnosis, periodontal information, health history, treatment plan or detailed treatment which is completely substandard given the complicated nature of the procedure.
- i. For patient G.H. there are no patient records at all, only insurance paperwork showing billing for a removable partial denture on June 15, 2012, 2 PA radiographs on June 25, 2102 and 6 radiographs on April 19, 2012. The records also reflect billing for multiple extractions for April 14 and June 8, 2012 but no patient or treatment records including diagnosis, periodontal information, health history, treatment plan or detailed treatment which is completely substandard given the complicated nature of the procedure.

- j. Patient M.L.'s record consisted of only one page of treatment notes stating "exam, prophyl, 2 bw's." There was no health history, no radiographs, no mention of oral condition including periodontal issues and no diagnosis of the radiographs he stated were taken.
- k. Patient E.M.'s records note an examination, prophyl and 3 radiographs but there was no diagnosis of the radiographs, no treatment plan or health history. There was a vague mention of a referral to an oral surgeon for extraction but insufficient detail associated with the referral.
- l. Patient C.W.'s records reflect three visits: 2 for exam, bitewing x-rays, and prophyl and one visit where the documentation was so poor it could not be read. There were 2 radiographs but nothing else including patient history, diagnosis, or treatment plan.
- m. Patient J.C.'s records showed that radiographs taken were not diagnoses and no other records including diagnosis, periodontal information, health history, treatment plan or detailed treatment which is completely substandard.
- n. For patient D.B. there are only insurance forms and no patient information.
- o. For patient M.B. the records document two visits with a total of 7 radiographs taken. However, there were no radiographs in the file, no diagnosis, long term treatment plan or patient history. There was a reference to incision and drainage of the buccal to tooth 18 but no other documentation regarding this or other treatment.
- p. For patient M.C. there were 4 dates of treatment with minimal information about each date. For October 4, 2014, the chart states "exam, 2 bw, prophyl, no radiographs" but M.C.'s insurance company was billed for fluoride treatment. The other three entries contained only a statement regarding amalgam completed. The records did not contain radiograph, diagnosis, patient history, treatment plan or a full description of treatment including on what tooth Licensee completed the amalgams in October 2014 and January and February 2015.

12. Licensee's actions as described above in paragraphs 3 through 11 constitute incompetency and misconduct in the performance of, or relating to one's ability to perform the functions or duties of any profession licensed or regulated by this chapter in that Licensee failed to maintain records sufficient to document the examination, treatment plan, diagnose and what treatment was completed as described in paragraph 10, above, for which the Board has authority to discipline Licensee's license.

13. Licensee's actions as described above in paragraphs 3 through 11 constitute violation of provisions of chapter 332 and regulations adopted pursuant to chapter 332 in that Licensee failed to keep adequate records and failed to complete the required continuing education to which he attested on his November 2014 renewal application.

14. Licensee's actions as described above in paragraphs 3 through 11 constitute violation of a professional trust or confidence in that Licensee failed to maintain records sufficient to document the examination, treatment plan, diagnose and what treatment was completed described in paragraph 11 above, for which the Board has authority to discipline Licensee's license.

15. Section 332.052, RSMo, states, in relevant part:

1. Dentists shall maintain an adequate and complete patient record for each patient and may maintain electronic records provided the record-keeping format is capable of being printed for review by the board.

16. Section 332.181, RSMo, states, in relevant part:

4. Effective with the licensing period beginning on December 1, 2002, a license shall be renewed every two years. To renew a license, each dentist must submit satisfactory evidence of completion of fifty hours of continuing education during the two-year period immediately preceding the renewal period. Each dentist shall maintain documentation of completion of the required continuing education hours as provided by rule. Failure to obtain the required continuing education hours, submit satisfactory evidence, or maintain documentation is a violation of section 332.321.

17. Regulation 20 CSR 2110-2.240 states, in relevant part:

(2) In order to renew a license, each dentist shall submit satisfactory evidence of completion of fifty (50) hours of continuing education during the two (2)-year period immediately preceding the renewal period, and each dental hygienist shall submit satisfactory evidence of completion of thirty (30) hours of continuing education during the two (2)-year period immediately preceding the renewal period. Any hours acquired beyond the required number may be carried forward into the next time block not to exceed twenty-five (25) hours for dentists and fifteen (15) hours for dental hygienists. Of the fifty (50) hours required for dentists, not less than forty (40) must be hours directly related to the updating and maintaining of knowledge and skills in the treatment, health, and safety of the individual dental patient. Of the thirty (30) hours required for dental hygienists, not less than twenty-five (25) must be hours directly related to the updating and maintaining of knowledge and skills in the treatment, health, and safety of the individual dental patient. One (1) hour of continuing education shall be granted for every fifty to sixty (50–60) minutes of contact (either academic or clinical) instruction.

(A) For the licensure renewal form due November 30, 2004, and each subsequent renewal period after that, the licensee shall

report the number of hours obtained for the two (2)-year period just completed and shall attest to those hours by signing the form. Each licensee shall retain records documenting his/her completion of the required hours of continuing education for a minimum of six (6) years after the reporting period in which the continuing education was completed. The records shall document the licensee's attendance at the continuing education course including, but not limited to, retaining the titles of the courses taken, dates, locations, receipts, course sponsors, agendas, and number of hours earned. The board may conduct an audit of licensees to verify compliance with the continuing education requirement. Licensees shall assist the board in its audit by providing timely and complete responses to the board's inquiries.

18. Cause exists for the Board to take disciplinary action against Licensee's license under § 332.321.2(5), (6) and (13), RSMo, which states in pertinent part:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any permit or license required by this chapter or any person who has failed to renew or has surrendered his or her permit or license for any one or any combination of the following causes:

...

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of, or relating to one's ability to perform, the functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or any lawful rule or regulation adopted pursuant to this chapter;

...

(13) Violation of any professional trust or confidence[.]

Joint Agreed Disciplinary Order

Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of § 621.045.3, RSMo:

19. The terms of discipline shall include that the dental license, license number 013064, be placed on **PROBATION** for a period of two (2) years ("disciplinary period"). During Licensee's probation, Licensee shall be entitled to engage in the practice of dentistry under Chapter 332, RSMo, provided he adheres to all of the terms of his Settlement Agreement.

I. EDUCATION AND MONITORING REQUIREMENTS

A. Licensee shall take and pass the Board's jurisprudence examination within twelve (12) months of this Agreement becoming effective. Licensee shall contact the Board office to request a current law packed and permission to sit for the jurisprudence examination no less than thirty (30) days prior to the date Licensee desires to take the examination. Licensee shall submit the required re-examination fee to the Board prior to taking the examination. Failure to take and pass the examination during the first twelve (12) months of the disciplinary period shall constitute a violation of this Agreement.

B. Licensee shall complete forty (40) hours of remedial education in diagnosis, treatment planning and record keeping from an accredited dental school. Licensee shall submit the proposed remedial education plan in writing to the Board for approval prior to beginning the remedial education. Any education completed without obtaining the Board's approval will not satisfy this requirement. Licensee shall complete a competency examination at the conclusion of the education. Licensee shall complete the education within the first nine (9) months of the disciplinary period. Failure to complete the education within the first nine (9) months of the disciplinary period shall constitute a violation of this Agreement.

C. Monitoring. Within thirty (30) days of the effective date of this agreement, Licensee shall enter into a contract with Affiliated Monitors, Inc. to monitor Licensee's record keeping, diagnosis, treatment planning, infection control, and other areas of the practice of dentistry identified by the evaluator.

- i. Licensee agrees to contract with the Board approved monitoring program for the two years of probation. As part of that contract, Licensee shall have an evaluator who is approved by the Board. Monitoring of patient charts will be conducted on a quarterly basis of 25 current patients under Licensee's care. The monitoring will include in-office visits and evaluation of Licensee's record keeping, diagnosis, treatment planning, infection control, and other areas of the practice of dentistry identified by the evaluator. The monitoring shall be random and subject to the following requirements:
 1. Prior to establishing a contract with the evaluator, Licensee must provide the evaluator with a copy of this Settlement Agreement. Licensee shall execute any and all releases or authorizations for the evaluator to provide the Board with copies of all written monitoring reports. Such releases or authorizations shall also authorize the Board to communicate with the evaluator about Licensee's needs, performance and progress.
 2. Licensee is responsible for all costs associated with and pursuant to the contract agreement with the evaluator, including but not limited to, monitoring evaluations, preparing reports, and complying with the evaluator's recommendations.
- ii. Licensee shall arrange for the evaluator to submit to the Board a written report of the on-site observations, patient record evaluations, and any compliance recommendations made by the evaluator. Licensee shall comply with the evaluator's recommendations and submit a written report to the Board explaining the changes Licensee has made in his dental practice. Failure to follow all recommendations made by the evaluator shall constitute a violation of this order

II. GENERAL REQUIREMENTS

A. Licensee shall meet with the Board or its representatives at such times and places as required by the Board after notification of a required meeting.

B. Licensee shall keep the Board apprised of his current home and work addresses and telephone numbers. Licensee shall inform the Board within ten days of any change of home or work address and home or work telephone number.

C. Licensee shall comply with all provisions of the Dental Practice Act, Chapter 332, RSMo; all applicable federal and state drug laws, rules, and regulations; and all federal and state criminal laws. "State" here includes the state of Missouri and all other states and territories of the United States.

D. During the disciplinary period, Licensee shall timely renew his license and timely pay all fees required for licensing and comply with all other board requirements necessary to maintain Licensee's license in a current and active state.

E. If at any time during the disciplinary period, Licensee removes himself from the state of Missouri, ceases to be currently licensed under provisions of Chapter 332, or fails to advise the Board of his current place of business and residence, the time of his absence, unlicensed status, or unknown whereabouts shall not be deemed or taken as any part of the time of discipline so imposed in accordance with § 332.321.6, RSMo.

F. During the disciplinary period, Licensee shall accept and comply with unannounced visits from the Board's representatives to monitor his compliance with the terms and conditions of this Settlement Agreement.

G. If Licensee fails to comply with the terms of this Settlement Agreement, in any respect, the Board may impose such additional or other discipline that it deems appropriate, (including imposition of the revocation).

H. This Settlement Agreement does not bind the Board or restrict the remedies available to it concerning any other violation of Chapter 332, RSMo, by Licensee not specifically mentioned in this document.

III. ADDITIONAL REQUIREMENTS

A. Licensee shall not allow his license to lapse.

B. Licensee shall notify, within 15 days of the effective date of this Settlement Agreement, all hospitals, nursing homes, out-patient centers, surgical centers, clinics, and all other facilities where Licensee practices or has privileges of Licensee's disciplinary status. Notification shall be in writing and Licensee shall, contemporaneously with the giving of such notice, submit a copy of the notice to the Board for verification by the Board or its designated representative.

20. The parties to this Agreement understand that the Missouri Dental Board will maintain this Agreement as an open record of the Board as provided in Chapters 332, 610 and 324, RSMo.

21. The terms of this settlement agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise provided herein, neither this settlement agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

22. Licensee, together with his heirs and assigns, and his attorneys, do hereby waive, release, acquit and forever discharge the Board, its respective members and any of its employees, agents, or attorneys,

including any former Board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to § 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case, its settlement, or from the negotiation or execution of this settlement agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this settlement agreement in that it survives in perpetuity even in the event that any court of law deems this settlement agreement or any portion thereof to be void or unenforceable.

23. If no contested case has been filed against Licensee, Licensee has the right, either at the time the settlement agreement is signed by all parties or within fifteen days thereafter, to submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties to the settlement agreement constitute grounds for denying or disciplining the license of the licensee. If Licensee desires the Administrative Hearing Commission to review this Agreement, Licensee may submit this request to: Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65101.

24. If Licensee has requested review, Licensee and Board jointly request that the Administrative Hearing Commission determine whether the facts set forth herein are grounds for disciplining Licensee's license and issue findings of fact and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining Licensee's license. Effective the date the Administrative Hearing Commission determines that the agreement sets forth cause for disciplining Licensee's license, the agreed upon discipline set forth herein shall go into effect.

LICENSEE



Elliott Munalula, D.D.S.

Date 6/2/16

BOARD



Brian Barnett,
Executive Director
Missouri Dental Board

Date 6/3/2016